APPENDIX

ORDER OF THE SUPREME COURT OF OHIO ALLOWING APPLICATION FOR AN ALTERNATIVE WRIT

(Dated January 20, 1982)

No. 82-28

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

THE STATE OF OHIO, EX REL. HELEN EARNHART,
Relator,

vs.

OHIO POWER SITING BOARD,
Respondent.

IN MANDAMUS

This cause originated in this court on the filing of a complaint for a writ of mandamus and upon consideration of the application of an alternative writ, pending final disposition of the cause by this court, it is ordered by the court that the application for an alternative writ be, and the same hereby is, allowed.

ORDER OF THE SUPREME COURT OF OHIO ALLOWING MOTION OF OHIO EDISON COMPANY FOR LEAVE TO INTERVENE AS RESPONDENT

(Dated January 27, 1982)

No. 82-28

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

THE STATE OF OHIO, EX REL. HELEN EARNHART,
Relator,

vs.

THE OHIO POWER SITING BOARD,
Respondent.

ENTRY

This cause is pending before the court on the filing of a complaint for a writ of mandamus and upon consideration of the motion, filed by counsel for Ohio Edison Company, for leave to intervene as a respondent, it is ordered by the court that this motion be, and the same hereby is, allowed.

ORDER OF THE SUPREME COURT OF OHIO SUSTAINING MOTION TO DISMISS

(Dated June 2, 1982)

No. 82-28

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

THE STATE OF OHIO, EX REL. HELEN EARNHART,
Relator,

vs.

OHIO POWER SITING BOARD *et al.*
Respondents.

IN MANDAMUS ON MOTION TO DISMISS

This cause originated in this court on the filing of a complaint for a writ of mandamus and was considered in the manner prescribed by law. On consideration thereof, it is ordered by the court that the motion to dismiss be sustained and cause dismissed.

ORDER OF THE SUPREME COURT OF OHIO DENYING REHEARING

(Dated June 30, 1982)

No. 82-28

THE SUPREME COURT OF THE STATE OF OHIO
THE STATE OF OHIO, CITY OF COLUMBUS

THE STATE OF OHIO, EX REL. HELEN EARNHART,
Relator,

vs.

OHIO POWER SITING BOARD,
Respondent.

REHEARING

It is ordered by the court that rehearing in this case is denied.

CONSTITUTION AND STATUTES INVOLVED

United States Constitution

AMENDMENT 14

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Ohio Constitution

Article I, Section 19

Private property inviolate, exception

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure, or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money, and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

Ohio Revised Code

4906.01 Definitions

As used in Chapter 4906. of the Revised Code:

(A) "Person" means an individual, corporation, business trust, association, estate, trust, or partnership or any officer, board, commission, department, division, or bureau of the state or a political subdivision of the state, or any other entity.

(B) "Major utility facility" means:

(1) Electric generating plant and associated facilities designed for, or capable of, operation at a capacity of fifty megawatts or more;

(2) An electric transmission line and associated facilities of a design capacity of one hundred twenty-five kilovolts or more;

(3) A gas or natural gas transmission line and associated facilities designed for, or capable of, transporting gas or natural gas at pressures in excess of one hundred twenty-five pounds per square inch.

"Major utility facility" does not include electric, gas, natural gas distributing lines and gas or natural gas gathering lines and associated facilities as defined by the power siting commission, nor gas or natural gas transmission lines over which an agency of the United States has exclusive jurisdiction.

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4906.04 Certificate for construction of major utility facility

No person shall commence to construct a major utility facility in this state without first having obtained a certificate for the facility. The replacement of an existing fa-

cility with a like facility, as determined by the power siting commission, shall not constitute construction of a major utility facility. Such replacement of a like facility is not exempt from any other requirements of state or local laws or regulations. Any facility, with respect to which such a certificate is required, shall thereafter be constructed, operated, and maintained in conformity with such certificate and any terms, conditions, and modifications contained therein. A certificate may only be issued pursuant to Chapter 4906. of the Revised Code.

A certificate may be transferred, subject to the approval of the commission, to a person who agrees to comply with the terms, conditions, and modifications contained therein.

4906.06 Application for certificate; contents; publication of notice; amendment

(A) An applicant for a certificate shall file with the power siting commission an application, in such form as the commission prescribes, containing the following information:

(1) A description of the location and of the major utility facility to be built thereon;

(2) A summary of any studies which have been made by or for the applicant of the environmental impact of the facility;

(3) A statement explaining the need for the facility;

(4) A statement of the reasons why the proposed location is best suited for the facility;

(5) A statement of how the facility fits into the applicant's forecast contained in the report submitted under section 1551.17 of the Revised Code;

(6) Such other information as the applicant may consider relevant or as the commission may by regulation or order require. Copies of the studies referred to in division (A)(2) of this section shall be filed with the commission, if ordered, and shall be available for public inspection.

The application shall be filed not less than two years, except one year in the case of transmission lines, nor more than five years prior to the planned date of commencement of construction. Such period may be waived by the commission for unforeseen emergencies.

(B) Each application shall be accompanied by proof of service of a copy of such application on the chief executive officer of each municipal corporation and county and the head of each public agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of such facility is to be located.

(C) Each applicant shall within seven days of the filing of the application give public notice to persons residing in the municipal corporations and counties entitled to receive notice under division (B) of this section, by the publication of a summary of the application in newspapers of general circulation in such area. Proof of such publication shall be filed with the commission.

(D) Inadvertent failure of service on, or notice to, any of the persons identified in divisions (B) and (C) of this section may be cured pursuant to orders of the commission designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the commission may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the commission considers appropriate.

(E) An application for an amendment of a certificate shall be in such form and contain such information as the commission prescribes. Notice of such an application shall be given as required in divisions (B) and (C) of this section.

4906.07 Hearing on application; fixing date; investigation; written report

(A) Upon the receipt of an application complying with section 4906.06 of the Revised Code, the power siting commission shall promptly fix a date for a public hearing thereon, not less than sixty nor more than ninety days after such receipt, and shall conclude the proceeding as expeditiously as practicable.

(B) On an application for an amendment of a certificate, the commission shall hold a hearing in the same manner as a hearing is held on an application for a certificate if the proposed change in the facility would result in any material increase in any environmental impact of the facility or a substantial change in the location of all or a portion of such facility other than as provided in the alternates set forth in the application.

(C) The secretary of the power siting commission shall investigate each application filed with the commission and shall, not less than fifteen days prior to the date any application is set for hearing submit a written report to the commission and to the applicant. A copy of such report shall be made available to any person upon request. Such report shall set forth the nature of the investigation, and shall contain recommended findings with regard to division (A) of section 4906.10 of the Revised Code and shall become part of the record and served upon all parties to the proceeding.

4906.10 Granting or denying certificate; period of initial operation; conditional certificate

(A) The power siting commission shall render a decision upon the record either granting or denying the application as filed, or granting it upon such terms, conditions, or modifications of the construction, operation, or maintenance of the major utility facility as the commission considers appropriate. The certificate shall be conditioned upon the facility being in compliance with standards and regulations adopted under Chapters 3704., 3734., and 6111. of the Revised Code. The period of initial operation, under a certificate, shall expire two years after the date on which electric power is first generated by the facility. During the period of initial operation the facility shall be subject to the enforcement and monitoring powers of the director of environmental protection under Chapters 3704., 3734., and 6111. of the Revised Code and to the emergency provisions thereunder. If a major utility facility constructed in accordance with the terms and conditions of its certificate is unable to operate in compliance with all applicable requirements of state laws, regulations, and standards pertaining to air pollution, such facility may apply to the director of environmental protection for a conditional operating permit under division (G) of section 3704.03 of the Revised Code and the regulations adopted thereunder. The operation of a major utility facility in compliance with such a conditional operating permit is not in violation of its certificate. After the expiration of the period of initial operation of a major utility facility, such facility shall be under the jurisdiction of the environmental protection agency, and shall comply with all laws, regulations, and standards pertaining to air pollution, water pollution, and solid waste disposal.

The commission shall not grant a certificate for the construction, operation, and maintenance of a major utility

facility, either as proposed or as modified by the commission, unless it finds and determines:

(1) The basis of the need for the facility;

(2) The nature of the probable environmental impact;

(3) That the facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;

(4) In case of an electric transmission line, that such facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems; and that such facilities will serve the interests of electric system economy and reliability;

(5) That the facility will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all regulations and standards adopted thereunder;

(6) That the facility will serve the public interest, convenience, and necessity.

(B) If the commission determines that the location of all or a part of the proposed facility should be modified, it may condition its certificate upon such modification, provided that the municipal corporations and counties, and persons residing therein, affected by the modification, shall have been given reasonable notice thereof.

(C) A copy of the decision and any opinion issued therewith shall be served upon each party.

4906.12 Applicability of PUCO Statutes

Sections 4903.02 to 4903.16 and sections 4903.20 to 4903.23 of the Revised Code shall apply to any proceeding

or order of the power siting commission under Chapter 4906. of the Revised Code, in the same manner as if the commission were the public utilities commission under such sections.

4903.10 Rehearing

After any order has been made by the public utilities commission, any party who has entered an appearance in person or by counsel in the proceeding may apply for a rehearing in respect to any matters determined in said proceeding. Such application shall be filed within thirty days after the entry of the order upon the journal of the commission.

Notwithstanding the preceding paragraph in any uncontested proceeding or, by leave of the commission first had in any other proceeding, any affected person, firm, or corporation may make an application for a rehearing within thirty days after the entry of any final order upon the journal of the commission. Leave to file an application for rehearing shall not be granted to any person, firm, or corporation who did not enter an appearance in the proceeding unless the commission first finds:

(A) The applicant's failure to enter an appearance prior to the entry upon the journal of the commission of the order complained of was due to just cause; and,

(B) The interests of the applicant were not adequately considered in the proceeding.

Every applicant for rehearing or for leave to file an application for rehearing shall give due notice of the filing of such application to all parties who have entered an appearance in the proceeding in the manner and form prescribed by the commission.

Such application shall be in writing and shall set forth specifically the ground or grounds on which the applicant considers said order to be unreasonable or unlawful. No party shall in any court urge or rely on any ground for reversal, vacation, or modification not so set forth in said application.

Where such application for rehearing has been filed before the effective date of the order as to which a rehearing is sought, the effective date of such order shall, unless otherwise ordered by the commission, be postponed or stayed pending disposition of the matter by the commission or by operation of law. In all other cases the making of such an application shall not excuse any person from complying with the order, or operate to stay or postpone the enforcement thereof, without a special order of the commission.

Where such application for rehearing has been filed, the commission may grant and hold such rehearing on the matter specified in such application, if in its judgment sufficient reason therefor is made to appear. Notice of such rehearing shall be given by registered mail to all parties who have entered an appearance in the proceeding.

If the commission does not grant or deny such application for rehearing within thirty days from the date of filing thereof, it is denied by operation of law.

Where the commission grants such rehearing, it shall specify in the notice of such granting the purpose for which it is granted. The commission shall also specify the scope of the additional evidence, if any, which will be taken, but it shall not upon such rehearing take any evidence which, with reasonable diligence, could have been offered upon the original hearing.

If, after such rehearing the commission is of the opinion that the original order or any part thereof is in any respect unjust or unwarranted, or should be changed, the commission may abrogate or modify the same; otherwise such order shall be affirmed. An order made after such rehearing, abrogating or modifying the original order shall have the same effect as an original order, but shall not affect any right or the enforcement of any right arising from or by virtue of the original order prior to the receipt of notice by the affected party of the filing of the application for rehearing.

No cause of action arising out of any order of the commission, other than in support of said order, shall accrue in any court to any person, firm, or corporation unless such person, firm, or corporation has made a proper application to the commission for a rehearing.

4903.11 Notice of appeal from order of commission

No proceeding to reverse, vacate, or modify a final order of the public utilities commission is commenced unless the notice of appeal is filed within sixty days after the date of denial of the application for rehearing by operation of law or of the entry upon the journal of the commission of the order denying an application for rehearing or, if a rehearing is had, of the order made after such rehearing. An order denying an application for rehearing or an order made after a rehearing shall be served forthwith by registered mail upon all parties who have entered an appearance in the proceeding.

4903.12 Review only by supreme court

No court order other than the supreme court shall have power to review, suspend, or delay any order made

by the public utilities commisson, or enjoin, restrain, or interfere with the commission or any public utilities commissioner in the performance of official duties. A writ of mandamus shall not be issued against the commission or any commissioner by any court other than the supreme court.

EXCERPT FROM CERTIFICATE OF RESPONDENT

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E. *SUMMARY OF THE COMMISSION'S DECISION*

The Commission has decided to grant the Ohio Edison Company's application for a Certificate of Environmental Compatibility and Public Need for the Masury-Greenville facility. We agree with the recommendations and conclusions of the Administrative Law Judge and the Secretary and are approving the stipulation of the parties (ICN 57).

In our judgment, each of the criteria listed in Section 4906.10(A) of the Revised Code has been met for the proposed line. To the extent that concerns have been raised about impacts from the line, we have included conditions herein where it was felt necessary. We are, therefore, issuing this Certificate to the Ohio Edison Company.

F. *THE COMMISSION'S RESPONSIBILITIES UNDER CHAPTER 4906. OF THE OHIO REVISED CODE*

Chapter 4906. of the Ohio Revised Code is a response to the dilemma posed by society's growing needs for energy, on the one hand, and its concern for safeguarding the natural, social and economic environment on the other. These needs for energy are bound up with population

growth, rising standards of living expectations and the high levels of technology and economic productivity such expansion requires. Were there to be a sustained shortage of power, the cost to society would not be simply the loss of comforts or amenities, but losses in opportunities and subsequent jeopardy to an improving standard of living for Ohio's citizens. Yet the production and transmission of electricity, by any means now available, inevitably take some toll on the environment, and in the absence of concerned and farsighted planning, may work profound injury. No perfect solution to the problem is yet in view. And even the imperfect measures proposed still add in some degree to the costs consumers must bear. These problems, of national and wider scope, are not confined to any one locality or electric power system; rather, they affect the entire state and reach beyond its limits into the national power grid.

The electric utility systems of the state are linked in a network, which in turn is joined to systems in neighboring states and regions. The creation of this transmission grid has increased the reliability of power supply wherever the network reaches and, by making the power surplus of any interconnected system available to other areas, and by pooling reserves, it has helped to slow the rate at which generating plants-and their attendant environmental impacts-must be added to the overall system. When plants are built, moreover, the network permits them to be sited at locations which minimize environmental impact and maximize economies of production. The power network depends, however, upon a sufficient system of high energy transmission lines. Thus, to the general considerations already mentioned, are added the legitimate concerns of the officials and residents of communities through which power lines must pass.

It is apparent that in 1972, the Ohio Legislature recognized that decisions involving interests as complex and diverse as those attending the location of utility generating plants, transmission lines, and the associated facilities of both could more properly be made only by an agency having statewide jurisdiction and an informed overview of the entire subject matter. *It concluded, moreover, that the proceedings would best be conducted in a single forum, where all parties, both public and private, could be heard, and where the interrelationship of all the issues would be apparent. In this way, decisions could be reached which appropriately balanced the viewpoints and interests of all constituencies over the full range of issues in each case.*

Accordingly, Chapter 4906. of the Revised Code provides that no "major utility facility" may be constructed in Ohio unless the Power Siting Commission has first issued a "certificate of environmental compatability and public need" (Revised Code Section 4906.04). *The Commission may issue such a certificate only after a hearing with respect to which opportunity to participate shall have been afforded to affected municipalities, counties, public agencies charged with protecting the environment or of planning land use, residents of the affected areas, and any other persons (for good cause shown).*

EXCERPTS FROM OHIO EDISON COMPANY SITE REPORT

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3. *Operation*

Transmission line audible noise is primarily a foul weather phenomena occurring during rain, snow, or fog. At voltages of 345-kV and below, conductor selection to meet load-carrying capacity and radio interference requirements results in audible noise levels barely perceptible at ground level.

Background noise levels have a significant effect upon noise tolerances. Transmission line audible noise is perhaps most noticeable during fog or high humidity conditions. During heavy rains, line noise may be less noticeable because of the higher background noise level.

The degree of annoyance with radio and television noise interference is expected to be within an acceptable range to the public. There should be no broadcasting pattern distortion. The radio and television broadcasting towers have been located, and none exist within 3/4 miles of the proposed lines.

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3. *Electrical Effects*

a. *Induced and Conducted Charges* - A thorough analysis of the production of audible noise and radio and television interference was presented under Section PSC-15-04, and ozone was discussed in Section PSC-15-04. Discussion here concerns induced and conducted charges.

The transmission line will produce electric and magnetic fields in its vicinity, as do all power lines

regardless of voltage. In the event of line faults to ground, current will also travel through the earth in order to return to the source. Currents induced in objects near the line from the line magnetic field, or faults returning through the earth, will reach measurable levels only during system faults, which will be cleared by circuit breakers in a fraction of a second.

The electric field under the line will continuously induce small electric currents in conducting objects underneath the line conductors. The magnitude of these currents is a function of both the electric field intensity near the ground under the line and the size of the object in which currents are induced.

The maximum electric field intensity at the edge of the right-of-way at 4 feet from the ground is approximately 500 volts per meter with the maximum intensity under the line being 700 volts per meter. These are low field intensities but may induce perceptible charging current on very large objects under the line, such as a large truck.

From experience, fences are not normally influenced by the induced voltage with lines of this voltage. Any complaints to the Ohio Edison Company regarding annoyances from induced voltages will be investigated by the company.

C. Ecological Impact

1. *Biota*

The disruptions of biota by construction, operation and maintenance activities on the preferred or alternate route will occur primarily on agriculture and forest land.

Streams within the right-of-way may receive minor effects from construction. This would occur when crossing them and may cause short-term increases in turbidity. Water runoff from clearing activity will be little if any increase above normal.

In Line Section I where the area is mostly classified as urban the vegetation in front of homes will mostly be trimmed for construction and maintenance. Little species change will take place because of the transmission line. Wildlife in this area is mostly associated with human habitats and consists of sparrows, starlings, pigeons, songbirds, rats, mice, feral dogs and cats, rabbits and squirrels. They are not expected to be affected by activities of construction, maintenance or operations of the transmission line.

2. *Stripping of Vegetative Cover*

Vegetation will be cut or sheared close to the ground. This will cause less soil disturbance than grubbing methods, and allow some of the soil cover to remain. (See Section 15-02.)

3. *Herbicides*

To control the many plant species found on the various sites along the right-of-way, a number of herbicides and application methods will be used. In selecting a herbicide and its application method, consideration is given to the species to be controlled, its size, density, reproductive habits, time of application, and the susceptibility to the herbicide, the site and sensitive crops in the area. In addition, the herbicide is also considered for its selectivity, persistence, toxicity, and its Federal EPA Registered Label Instruction and uses.

Several methods of application are normally used along the right-of-way. The five major brush treatments are:

the application of foliage sprays, which is best for treating dense stands of brush; basal sprays, for treating less dense stands or tall trees where aerial application should be avoided; cut surface treatment; stump application where species need to be cut; and soil applications for herbicides that are taken up through root absorption.

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Relative impact of the transmission line depends on the various types of land use. Impact will occur when the line changes access or use of adjacent land. Impact also occurs when the presence of the line affects the enjoyment of residential values.

In the case of both Routes A and B, Line Sections I and II are virtually the same. There would be no changes in access or the use of adjacent lands.

In Line Section III there would be little effect on access or use of adjacent lands since access to the right-of-way can be directly from existing public highways.

However, in Line Section I some impact as to enjoyment of the use of adjacent residential land areas would be possible, but no more objectionable than the existing facilities now located along the public thoroughfare. In the case of Line Section II this would be no problem since the line is an addition to one side of an existing tower line.

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